

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Boysin Ralph Lorick and
Cynthia Theresa Lorick,

Case No. 16-45645-NHL

Debtors.

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**APPLICATION FOR ORDER DIRECTING
DISTRIBUTION OF SALE PROCEEDS TO WELLS FARGO BANK, N.A.**

Wells Fargo Bank, N.A., as Trustee for the registered holders of Sovereign Commercial mortgage Securities Trust, 2007-C1, Commercial Pass-Through Certificates, Series 2007-C1 (the “Lender”), a secured creditor of the above-captioned debtors (the “Debtors”), submits this application (the “Application”) for entry of an order directing the distribution of the Sale Proceeds (defined below) to the Lender. In support of the Application, the Lender shows the Court as follows:

JURISDICTION

1. The Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b). Venue of this chapter 11 case (the “Chapter 11 Case”) in this District is proper under 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

2. On December 15, 2016 (the “Petition Date”), the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtors have continued as debtors and debtors-in-possession in the operation of their business pursuant to sections 1107 and 1108 of the Bankruptcy Code. No committee of unsecured creditors has been appointed.

3. On or about September 13, 2005, Independence Community Bank, the Lender's predecessor-in-interest, made a loan to the Debtors in the original principal amount of \$2,250,000.00. The loan was secured by a first mortgage on the 3126 Coney Island Avenue, Brooklyn, New York 11235 (the "Property").

4. On January 30, 2013, the Lender acting by and through Waterstone Asset Management LLC, its sub-special servicer, commenced an action to foreclose the first mortgage on the Property in the Supreme Court for the State of New York, County of Kings (the "Receiver Court"), Index Number 500469/2013 (the "Foreclosure Action").

5. On June 3, 2016, the Receiver Court entered an Amended Final Judgment of Foreclosure and Sale (the "Foreclosure Judgment"), providing for the scheduling of a foreclosure sale by Lender and noting that Lender was owed more than \$3,668,619.69.¹

6. On June 9, 2017, the Debtors filed a *Motion for an Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code (i) Approving Bidding Procedures and Certain Terms and Conditions of Sale, (ii) Scheduling the Deadline for an Auction and Hearing Date, and (iii) Authorizing Sale of Real Property "As Is" and "Where Is", Free and Clear of All Liens, Claims, Encumbrances, and Interests* [Dkt. No. 67] (the "Sale Motion") seeking to sell the Property. On July 25, 2017, the Court entered an order approving the sale procedures proposed under the Sale Motion (the "Sale Procedures Order") and scheduling an auction for August 22, 2017 at 11:00 a.m.

7. Despite attempts by the Debtors to postpone the auction, an auction was held on August 22, 2017, resulting in several bids. A hearing on the Sale was held by the Court on August 24, 2017. By Order dated September 8, 2017 (the "Sale Confirmation Order"), the Court approved

¹ The amount owing to the Lender has increased since the entry of the judgment.

Soleyman Ghalchi as the successful bidder with a bid of \$7.35 million and Jack Geula as the backup bidder with a bid of \$6.95 million for the sale of the Property (the “Sale”) [Dkt. No. 95].

8. The Sale Confirmation Order provides that “proceeds of the sale of the Property shall be held in escrow by counsel for the Debtors until further order of the Court.” [Dkt. No. 95, ¶ 9].

9. After numerous attempts by the Debtors to stay the Sale, the closing of the Sale took place on November 21, 2017. Upon information and belief, Ortiz & Ortiz LLP (“Ortiz”) holds proceeds of the Sale totaling approximately \$7.35 million (the “Sale Proceeds”).

RELIEF REQUESTED

10. In accordance with the Court’s Orders, the Property was sold free and clear of all liens, and the Lender’s lien attached to the Sale Proceeds with the sale validity, force, and effect that the Lender had prior to the closing. *See* Sale Confirmation Order at ¶ 9. The Sale Confirmation Order provides that counsel for the Debtors shall hold the Sale Proceeds in escrow until further order of the Court. *Id.*

11. Until such time as the claim is paid in full, interest on the Foreclosure Judgment at a rate of 9% per annum, approximately \$964.08 per day, and fees continue to accrue on the Lender’s claim. The Lender estimates that as of December 15, 2017, the Debtors will owe the Lender \$5,220,520.12.² In addition to further delay to the Lender, which has had to wait for approximately five years to be paid since the Debtors defaulted, delay in payment of the Sale Proceeds will harm the Debtors as the Lender’s fees and interest will continue to accrue. The Court should order payment to the Lender to occur on December 15, 2017.³

² A payoff letter in support of this amount is attached hereto as Exhibit A. The letter is one of several that have been sent to Debtors’ counsel during the course of this case.

³ Lender will be filing a motion to shorten notice in connection with this Application with a request that this Application be heard on December 13, 2017.

12. The Sale Proceeds may not be distributed prior to further order of the Court. The Lender requests that the Court direct Ortiz to pay \$5,220,520.12 of Sale Proceeds to the Lender in satisfaction of its claim on December 15, 2017.⁴

WHEREFORE, in accordance with the Sale Confirmation Order, the Lender respectfully requests that the Court enter an order substantially in the same form as the order attached here to as **Exhibit B**: (i) granting the Application; (ii) directing Ortiz to pay \$5,220,520.12 of Sale Proceeds to the Lender in satisfaction of the Lender's claim on December 15, 2017; and (iii) ordering such other and further relief as is just and proper.

Dated: December 2, 2017

Respectfully submitted,

/s/ Colin M. Bernardino

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(Admitted *pro hac vice*)
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Counsel for Wells Fargo Bank, as Trustee for the registered holders of Sovereign Commercial Mortgage Securities Trust, 2007-C1, Commercial Pass-Through Certificates, Series 2007-C1

⁴ For every day after December 15, 2017, Lender's claim will be increased by \$964.08, and the amount to be paid will need to be increased by a corresponding amount. Additionally, Lender reserves the right to seek additional attorney's fees if, instead of agreeing to pay the Lender the full amount of its claim on December 15, 2017, the Debtors cause the Lenders to incur additional attorney's fees.

EXHIBIT A

December 1, 2017 Payoff Letter



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December 1, 2017

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BY EMAIL

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RE: In re Boysin Lorick and Cynthia Lorick ("Debtors")
Case No. 16-45645 (NHL)

Dear Ms. Ortiz:

We write in response to your recent request for a payoff statement of Debtors' obligations under the loan held by Wells Fargo Bank, N.A., as Trustee for the registered holders of Sovereign Commercial Mortgage Securities Trust, 2007-C1, Commercial Mortgage Pass-Through Certificates, Series 2007-C1 ("Lender") that is secured by property located at 3126 Coney Island, Brooklyn, New York. As you are aware, on June 3, 2016, Lender obtained an Amended Final Judgment of Foreclosure and Sale that was entered in Kings County Supreme Court on June 8, 2016 (the "Foreclosure Judgment"). A copy of the Foreclosure Judgment is has been previously provided. Based on the Foreclosure Judgment through November 30, 2017, the amount due to Lender is **\$5,220,520.12**, calculated as follows:

Foreclosure Judgment	\$3,763,522.47
Accrued and Unpaid Contract Interest (5.25%) from January 31, 2016 through June 8, 2016 (Per Diem: \$290.56) (130 days)	\$37,772.80
Accrued and Unpaid Default Interest (10.75%) from January 31, 2016 through June 8, 2016 (Per Diem: \$594.96) (130 days)	\$77,344.80
Total Judgment Amount:	\$3,878,640.07

ATLANTA AUGUSTA CHARLOTTE DALLAS DENVER LOS ANGELES NEW YORK RALEIGH SAN DIEGO SAN FRANCISCO
SEATTLE SHANGHAI SILICON VALLEY STOCKHOLM TOKYO WALNUT CREEK WASHINGTON WINSTON-SALEM

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 December 1, 2017
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Accrued Interest on Judgment Amount from June 9, 2016 through December 15, 2017 at the rate of 9% (Per Diem \$956.38) (555 days)	\$530,790.90
Post-Judgment Tax Advance made on December 19, 2016	\$22,112.10
Accrued interest on Tax Advances at 9% from December 19, 2016 through December 15, 2017 (Per Diem \$5.45) (362 days)	\$1,972.90
Post-Judgment Insurance Advances made on February 12, 2016 and March 9, 2016	\$9,136.13
Accrued interest on Insurance Advances at 9% from March 9, 2016 through December 15, 2017 (Per Diem \$2.25) (647 days)	\$1,455.75
Referee's Fees	\$500.00
Publication Costs	\$3,790.52
Property Protection Advances	\$23,136.90
Additional Attorneys' Fees and Costs ¹	<u>\$748,984.85</u>
Total Amount Due to Lender	\$5,220,520.12

The amounts stated herein are being provided to you for informational purposes only and shall not be deemed an estoppel from collecting the actual amounts due under the Loan Documents or a waiver of any amounts sought under Lender's proofs of claim filed in the Debtors' bankruptcy case. Please note that additional interest continues to accrue at a per diem basis as well as additional attorneys' fees, Lender reserves the right to seek these additional amounts. The actual amount due and owing should be confirmed at the time of payment.

¹ Attorneys' fees and costs for the months of November 2017 have not been finalized and Lender anticipates it will incur additional attorneys' fees and costs in December 2017. As a result, this figure includes an estimate of \$100,000.00 for November and December 2017. The actual amount incurred by the Lender may be greater, and the Lender reserves the right to insist on payment of the actual amount.

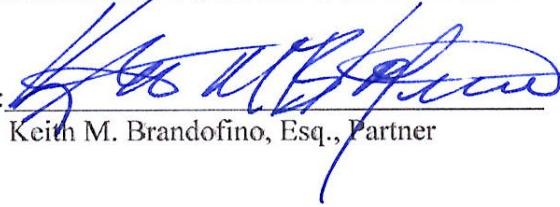
Norma E. Ortiz, Esq.
December 1, 2017
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Additionally, the amounts set forth herein do not include any amounts recovered or incurred by the state court-appointed receiver. These amounts will need to be taken into account at the time of payment.

Very truly yours,

KILPATRICK TOWNSEND & STOCKTON LLP

By:


Keith M. Brandofino, Esq., Partner

cc: John Church (By E-Mail)
Dennis McCloskey (By E-Mail)
Colin Bernardino, Esq. (By E-Mail)
Therese M. Reyes, Esq. (By E-Mail)

EXHIBIT B

Proposed Order

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

Boysin Ralph Lorick and
Cynthia Theresa Lorick,

Case No. 16-45645-NHL

Debtors.

-----X

**ORDER APPROVING DISTRIBUTION OF
SALE PROCEEDS TO WELLS FARGO BANK, N.A.**

UPON the application (the “Application”) of Wells Fargo Bank, N.A., as Trustee for the registered holders of Sovereign Commercial mortgage Securities Trust, 2007-C1, Commercial Pass-Through Certificates, Series 2007-C1 (the “Lender”), a secured creditor of the above-captioned debtors (the “Debtors”), for entry of an Order directing the distribution of certain Sale Proceeds; and it appearing that the Court has jurisdiction over the Application pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of the Debtor’s Chapter 11 Case and the Application in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that no other or further notice need be provided; and the Court having found and determined that the relief sought in the Application is in the best interests of the Debtor, its estate, creditors and all parties in interest and that the legal and factual basis set forth in the Application establish just cause for relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Application is GRANTED as set forth herein.
2. On December 15, 2017, Ortiz & Ortiz LLP shall distribute \$5,220,5201.2 (the “Claim Payment”) to the Lender in satisfaction of its claim. However, in the event that Ortiz & Ortiz LLP does not distribute the Claim Payment by December 15, 2017, Ortiz & Ortiz

LLP shall increase the amount of the Claim Payment by \$964.08 for every day after December 15, 2017, until Lender receives the Claim Payment.

3. Lender shall be allowed to apply for payment of additional amounts in the event that the Debtors contest the Application or Claim Payment and cause the Lender to incur additional attorney's fees or other costs.
4. The Court shall retain jurisdiction with respect to all matters arising from and related to this Order.